

(1976) 07 CAL CK 0025

Calcutta High Court

Case No: Civil Revision No. 2811 of 1975

P.K. Roy

APPELLANT

Vs

Bimala Mukherjee

RESPONDENT

Date of Decision: July 8, 1976

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 38, 38(3)
- West Bengal Premises Tenancy Act, 1956 - Section 14(4), 17(1), 17(2), 17(2A), 17(3)

Citation: 80 CWN 939 : (1976) 2 ILR (Cal) 306

Hon'ble Judges: S.K. Datta, J

Bench: Single Bench

Advocate: D.N. Lahiri, for the Appellant; R.P. Bagchi and Marian Kumar Ghosh, for the Respondent

Judgement

S.K. Datta, J.

The landlord opposite party instituted a suit for recovery of possession of the flat held by the Defendant Petitioner as a tenant at a monthly rent of Rs. 450 according to English calendar on the ground of default in payment of rent since March 1973. The Defendant Petitioner on entering appearance filed a petition u/s 17(1) of the West Bengal Premises Tenancy Act and has been depositing current rent or damages equivalent to rent every month. The Petitioner also filed an application u/s 17(2) of the Act raising a dispute as to the amount of rent payable by him in view of the deliberate total stoppage of water in the tenanted premises by the landlord since January 1973 and prayed for determination of the amount of rent payable by him. By order No. 19 dated May 19, 1975, the learned Munsif rejected the Petitioner's prayer for stay of hearing of the petition u/s 17(2) of the Act till the decision in the proceeding pending before the Rent Controller for stoppage of water. The Court also rejected by order No. 20 of same date the application of the Defendant Petitioner for adducing evidence in support of his application u/s 17(2) on

the ground that there was no scope for determination of question of suspension of rent in such application. In regard to the petition u/s 17(2) the Court noticed that there was no dispute about the rate of rent and that the Petitioner was in arrears from March 1973. It was held that there was no provision in the Act or in the Transfer of Property Act providing for suspension or abatement of rent by the tenant where his landlord interfered with amenities like supply of water. It was, accordingly, held further that the Petitioner had no right to withhold payment of rent when there was no dispute regarding the rate of rent or the amount payable. The petition u/s 17(2) was, accordingly, rejected.

2. By the same order some other applications filed by the Petitioner u/s 17(2A)(a) were disposed of and in this Rule we are not concerned with the same. The Petitioner has obtained this Rule challenging the propriety of the order rejecting his application u/s 17(2) of the Act as also his other application for adducing evidence in support thereof.

3. Mr. Lahiri, the learned Advocate appearing for the Petitioner, submitted that the learned Munsif was in error in thinking that in an application u/s 17(2) of the Act the tenant was not entitled to plead suspension of rent at least partially when by a deliberate or tortuous act the landlord suspended an essential amenity. In support, he relied on an unreported decision of A.C. Gupta J. of this Court (as his Lordship then was) in K.P. Moulik v. Sm. Harimanjuri Dassi C.R. No. 99 of 1970 Unreported decided on May 31, 1971. In that case, it was found that the landlord had deliberately disconnected electricity where rent was inclusive of electricity and supply of filtered water, which was an amenity with the tenancy, was also subsequently discontinued. There was also no dispute that the tenant was admittedly in arrear. His Lordship observed:

After the decision of the Supreme Court in [Surendra Nath Bibra Vs. Stephen Court Ltd.](#), it cannot now be doubted that the doctrine of suspension of rent is applicable in this country in a proper case. In that decision it was observed by their Lordships that it would depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of rent.

If a tenant is dispossessed by the landlord from the premises, he cannot certainly be asked to pay rent for the period of his dispossession. It also appears to be a settled position that substantial interference of the premises will amount to dispossession and the tenant will be entitled to suspension or abatement of rent, as the case may be, so long as the interference continues. On the fact of the present case, I am of opinion that the Defendant is not entitled to suspend the payment of rental altogether for the period in question, but he should pay a proportionate part of the rent. The Court below will now decide the exact amount of rent that the tenant should be asked to deposit for the said period in the facts and the circumstances of the case.

4. Mr. Bagchi appearing for the landlord opposite party submitted that there was a Bench decision holding a contrary view. He referred to the Bench decision in *National Model Industries Ltd., v. Birendra Nath Mitra and Ors.* 60 C.W.N. 547 (DB) in which the Court was considering whether the tenant was entitled to suspend rent for the failure of the landlord to carry out repairs which he was bound in law to do. It was observed by Das Gupta J. (as he then was) while delivering the judgment of the Court as follows:

I have, therefore, come to the conclusion that if under the general law the tenant was entitled to suspension of rent for failure of the landlord to carry out repairs which he was bound in law to do, this remedy would be available to the tenant in respect of the failure of the landlord to carry out repairs coming u/s 38(3) of the West Bengal Premises Rent Control Act. I find it impossible to hold, however, that the general law gives any such remedy to the tenant. Even before Section 38(3) of the Act laid it down to be the duty of the landlord to carry out certain repairs to the premises, the landlord would have been bound in law to carry out such repairs as agreed upon as a term of tenancy. There does not appear to be a single case where any Court in this country had held that failure to carry out repairs which the landlord was bound to do under the covenant would entitle the tenant to suspension of rent. do not think that it would be proper to consider the landlord's failure to carry out repairs as an act of eviction of the tenant even though the result may be that the tenant is unable to use the premises....Clearly, however, the Court in ascertaining what amount is due as arrears of rent has to take into account the provisions of the second sub-section of Section 38 under which the tenant is entitled to deduct from the rent the costs of repairs made by him.

5. The Court took into consideration the amount spent by the tenant for repairs and sent back the case to the Court below for ascertaining the amount for the purpose of finding out the arrears of rent that the tenant should be ordered to deposit u/s 14(4).

6. In Halsbury's Laws of England (3rd ed., vol. 23, Article 1211, p. 551) it has been laid down:

The tenant is not liable for rent accruing due after he has been evicted from the premises either by the landlord or by a person lawfully claiming by title paramount so long as the eviction continues.

To constitute an eviction for this purpose, it is not necessary that there should be an actual physical expulsion from any part of the premises; any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof, will operate as an eviction.

7. In *Rani Latika Sundari v. Rani Surnomoyee* 5 C.W.N. 353 (DB) the Court considered the application of the doctrine of suspension of rent when the landlord disturbed

the tenant's possession by collecting rent from the potato vendors in the demised premises. The Court concurred with the view of an earlier Division Bench in *Dhanpart Singh v. Md. Kazim* ILR (1896) 24 Cal. 296 which it was held:

...where the act of the landlord is not mere trespass but

something of a grave character interfering substantially with the enjoyment by the tenant of the property demised to him, there is suspension of rent during such interference though there may not be an actual eviction.

It was held that in such a case there would be suspension of rent in an action for rent by the landlord which claim in the circumstances was dismissed.

8. In *Dwijendra v. Aftabuddi* AIR 1917 Cal. 177 a Division Bench of this Court held:

To constitute an eviction, it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises; any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction.

9. Again in [Nishi Kanta Sarkar Vs. Sir David Ezra and Another](#), the Court proceeded on the basis that a substantial interference by the lessor with the enjoyment of the property, something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises would constitute eviction though there was no actual physical dispossession.

10. In [Tirthabala Dasi Vs. Srila Srijukta Uday Chand Mahtab and Another](#), a Division Bench was considering the case of a patni sold in execution of a decree and purchased by N who assigned it to T. The sale was not confirmed for years and the landlord issued several notices to sub-tenants not to pay rent to T and instituted a rent suit against the sub-tenants. After confirmation, there was no further interference but the notices to sub-tenants were not withdrawn. In the circumstances, it was held that T was not entitled to total suspension of rent by reason of the disturbance of the possession but was only entitled to a proportionate abatement of rent. It is to be noticed in this case that there was no actual or physical dispossession of the tenant by the landlord but substantial interference with the possession by the landlord. In *Ashutosh v. Indu Bhusan Biswas* (1944-45) 49 C.W.N. 470 it is held by another Division Bench that when the landlord acts tortuous it is for the Court to consider whether the rule of equity for a total suspension of rent should or should not be applied. In *Upendra Nath v. Harihar* (1957) 62 C.W.N. 666 it is held that when by his own conduct and by breach of a contract the landlord has made a portion of the premises uninhabitable, the tenant is entitled to get a suitable relief outside the Rent Control Act unless he is prevented by the provision of any other law.

11. Mr. Bagchi submitted that all the decisions referred to above involved dispossession of the lessee from the demised premises or part thereof directly or indirectly. Further, the remedy of the lessee, if any, for any breach of the covenant will be in any action for damages. The decisions we have considered above have, however, laid down the proposition that, for application of the doctrine of suspension of rent, a substantial interference by the landlord with the enjoyment of the property will amount to dispossession as has been held by Gupta J. in the case cited above. There is no reason why a landlord's deliberate and tortuous act resulting in substantial interference in the enjoyment of the amenities of the tenancy of the property will not amount to such dispossession that will entitle the lessee to claim total or partial suspension of rent, for the covenant for rent also postulates enjoyment of the property with all amenities and without interruption. Further, there is no reason why the tenant should be relegated to an action for damages instead of pleading a demurer to the landlord's claim in law.

12. [Surendra Nath Bibra Vs. Stephen Court Ltd.](#), referred to above, lays down that while the doctrine of suspension of rent will be applicable in India, it will not be applicable to all cases as an inflexible rule. It will be inequitable that a tenant should not pay any rent when he enjoys a substantial portion of the demised property without much inconvenience. At the same time, it will be unfair if a tenant is asked to pay compensation for the use of the property when he is not given possession of a substantial portion of such property. The Court finally observed:

....it will depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent.

In the case under consideration, it was held that where two out of three bed-rooms were given possession of to the tenant, he was to pay a proportionate part of rent in the suit for recovery of rent filed by the landlord.

13. The ratio of the decisions cited above appear to be as follows:

(1) In cases of eviction of the tenant from the demised property, the tenant will be entitled to suspension or partial abatement of rent.

(2) To constitute such eviction it is not necessary that there must be physical dispossession of the tenant from the property or any part thereof. Any act or interference with the tenant's enjoyment a possession of the property or any part thereof by any deliberate and tortuous act of the landlord or his agent will constitute eviction for application of the doctrine of suspension of rent.

(3) Such interference in the tenant's enjoyment of the property is of a grave and substantial nature.

(4) It will depend in the circumstances of each case whether there should be a suspension of rent or partial abatement of rent.

(5) It is open to the tenant to claim suspension or proportionate abatement of rent in an action against him by the landlord and the remedy is not confined only to action for damages by the tenant against his landlord.

14. In the case before us since the tenant admittedly had been in occupation of the premises, there should not be total suspension of rent but only a proportionate abatement of the rent if the allegation of the stoppage of supply of filtered water in the demised premises by any tortuous act of the landlord is established on evidence as urged by the Petitioner. As to abatement of rent it would also be for the learned Munsif to consider its quantum on a consideration of the facts and circumstances of the case and as such evidence as may be adduced if the alleged act on the part of the landlord is established in evidence.

15. The learned Munsif was in error in thinking that such question relating to suspension or proportionate abatement of rent was outside the scope of Section 17(2) of the West Bengal Premises Tenancy Act, 1956. The provisions of the said Act are only supplemental to the general law and its provisions apply in modification of the general law only when there is any provision to that effect. Consideration of the pleas of suspension of rent under general law has not been excluded by the Act. In fact, it was observed in [Ashalata Mitra Vs. A.D. Viz](#), following [Bidyapati Ghosh Vs. Raj Kumar Pal](#), as follows:

...it is the Court's duty when an application is made u/s 14(4) (of the 1950 Act) to decide for the purpose of the application first that there is relationship of landlord or tenant in case this is disputed ; secondly, what rent, if any, is in arrears; thirdly, the rate at which rent was last paid. For the decision of that matter, it may often be necessary for the Court to come to a decision on other questions, e.g., whether the tenant was entitled to total suspension of rent or to an abatement of rent or whether a claim for appropriation of an advance already paid to the rent was allowed.

16. It was further held that it would be impossible for the Court to decide on the application u/s 14(4) without coming to a decision on the questions indicated above. The situation is similar in this case where a dispute has been raised u/s 17(2) of the Act as to the quantum of rent payable by the tenant and such dispute in law has to be decided on this application before the Court determines the amount payable by the tenant.

17. For all these reasons the Rule succeeds and is made absolute and the orders so far as it relates to application of the Defendant Petitioner and the application for adducing evidence to support the plea of suspension of rent are u/s 17(2) are set aside. The learned Munsif is directed to determine the amount of rent payable by the tenant on his application u/s 17(2) of the Act. For this purpose the Court will consider the materials on record as also such evidence as may be adduced by the parties in support of their respective cases.

18. The order rejecting the Petitioner's application for stay of his application u/s 17(2) of the Act till the conclusion of the proceeding before the Rent Controller is not interfered with and the order on the other applications will stand as they are not the subject-matter of the present Rule. After the Section 17(2) application is disposed of, the Court will proceed to consider the application filed by the Plaintiff opposite party u/s 17(3) of the Act.

19. There will be no order as to costs. Let the records be sent down at once.